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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,583	12/10/2001	Giorgio Barzaghi	Q67651	3491
7590 10/30/2007 SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC 2100 Pennsylvania Avenue, N.W. Washington, DC 20037-3213			EXAMINER KNOLL, CLIFFORD H	
			ART UNIT 2111	PAPER NUMBER
			MAIL DATE 10/30/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/006,583

Applicant(s)

BARZAGHI ET AL.

Examiner

Clifford H. Knoll

Art Unit

2111

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 October 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 02 October 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached Response to Arguments.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Clifford Knoll
Examiner AU2111
/Clifford Knoll/

Response to Arguments

Applicant's arguments filed 10/2/07 have been fully considered but they are not persuasive.

Regarding the rejection under 101, Examiner duly notes the Applicant's cancellation of claim 13. Applicant is advised that when the intention is to cancel claims, which one might infer from the present communication, the claim text is not presented, as it was in the previous communication of 10/9/2006; also, the status upon presentation is "canceled", as per rule §1.121 (5)(c)(4):

(4) When claim text shall not be presented; canceling a claim.

(i) No claim text shall be presented for any claim in the claim listing with the status of "canceled" or "not entered."

(ii) Cancellation of a claim shall be effected by an instruction to cancel a particular claim number. Identifying the status of a claim in the claim listing as "canceled" will constitute an instruction to cancel the claim.

Moreover, from the previous communication of 1/9/2006, Applicant in his Remarks states: "Claims 1-14 remain in the application" (p. 6, line 1). If Applicant had intended to cancel a claim, it would have been more appropriate to state "Claims 1-12 and 14 remain in the application. Claim 13 has been cancelled", or its equivalent.

Applicant traverses the rejection under 101 and argues that: "[t]his has been explained in previous responses. It is not clear from the remarks in the present Office action if the examiner read those remarks, since there is no acknowledgement and no explanation as to why the MPEP and case precedent do not apply" Applicant is

encouraged to read the previous Office Action (4/3/06), in particular, the second paragraph of the Response to Arguments, found on page 6, which are reproduced here for the Applicant's convenience:

"Regarding claim 14, Applicant claims a disembodied algorithm. The recitation of 'when said program is run on a computer' does not positively recite that a program is actually run or a method actually performed on a computer; thus the recitation fails to clearly establish the claimed method as an integral part of a tangible invention"

Examiner maintains this position and is unpersuaded absent further arguments to the contrary.

Regarding claim 1, Applicant argues that the invention is distinct from Ludtke because "Ludtke is in the field of audio/video applications"; "the format of the data is not homogeneous", "converters should be provided in the Media Manager", the "network is not managed in a distributed mode", "distributed control characteristics are highly exploited" (pp. 2-3); however, these distinctions are irrelevant. If the Applicant intends to distinguish the claimed invention from the anticipatory art, it will be necessary to positively recite those features upon which the distinction relies.

Applicant further argues that Ludtke does not disclose "a peripheral unit controlled by each of the VCR 12 or set-top box 13. There are none" (p. 3); however Examiner has previously cited "allowing the video cassette recorder to send data to the computer 14 for display" (col. 3, lines 59-61) wherein the "allowing" is performed by the

control unit of the device which interfaces over a standard bus via the control unit. Thus the peripherals have been adequately described.

Applicant further argues that Ludtke does not disclose “submit[ting] information concerning data consumed and provided by the peripheral units ... to the master control”; Examiner determines that “determin[ing] if the data needs to be converted” constitutes information concerning data provided; namely if the data needs to be converted constitutes a piece of information and it is provided for the determining taught. If the information is not provided, there is no determination. Events concerning the peripheral device are also cited in support of information (e.g., col. 9, lines 17-20); wherein events are responsive to data consumed and provided, otherwise they are not events that concern the peripheral unit. It is not clear how the Applicant intends to distinguish the broadly recited “information concerning” from these teachings of Ludtke.

Applicant further argues that “all events generated by a device go through the DCM to the event manager. But the DCM is not what the examiner has identified as the claimed control unit”; however the control unit was been clearly identified previously. This passage is merely intended to support the submission of “information concerning”; whether this information eventually finds its way to the DCM is irrelevant.

Applicant further argues that Ludtke does not disclose “send[ing a] message over the bus whenever the data provided by at least one of the peripheral units varies”; however at the cited passage, “user interaction” is considered data that varies. When a user interacts with the remote device, and event is generated and is sent to the master controller. Further support is found at column 10, lines 17-21: a “DCM 56 controlling its

Art Unit: 2111

device from a remote location will need to receive messages indicating what the user is doing and will need to send appropriate messages to the device", wherein the user interface at the remote device that mediates the user interaction can also appropriately be considered to be peripheral to the interface control unit that transmits the information). This event generation is determined to be anticipatory of spontaneously sending a message.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clifford H. Knoll whose telephone number is 571-272-3636. The examiner can normally be reached on M-F 0630-1500.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Rinehart can be reached on 571-272-3636. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2111

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Clifford H Knoll/
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Patent Examiner
Art Unit 2111

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